UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

LANCEY TAYLOR,	)	
	)	
Plaintiff	)	
	)	
v.	)	Civil No. 00-56-B
	)	
MAZDA MOTOR (USA) n/k/a	)	
AUTOALLIANCE INTERNATIONAL,	)	
and QUALITY SAFETY SYSTEM CO.	)	
	)	
Defendants	)	

RECOMMENDED DECISION ON DEFENDANT QUALITY SAFETY SYSTEMS COMPANY'S MOTION FOR SUMMARY JUDGMENT (DOCKET NO. 14)

Defendant-manufacturer Quality Safety Systems Company ("QSS") moves for summary judgment against Plaintiff Lancey Taylor's claims for negligence, strict liability and breach of the warranty of merchantability (Counts VII, VIII and IX of Complaint) on the ground that it cannot be held liable for design defects alleged to have existed in Plaintiff's automobile seatbelt because it was not the designer of the product and was not otherwise negligent in the manufacture of the seatbelt. (Motion for Summary Judgment, Docket No. 14, at 3-5.) I now recommend that the Court **GRANT** Defendant's Motion for Summary Judgment.

Summary Judgment Standard

The Court views the record on summary judgment in the light most favorable to the nonmovant. *See Santiago-Ramos v. Centennial P.R. Wireless Corp.*, 217 F.3d 46, 50 (1st Cir. 2000). A party moving for summary judgment is entitled to a grant of summary judgment in its favor only if "the pleadings, depositions, answers to interrogatories, and admissions on file,

together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). Once the moving party has presented evidence of the absence of a genuine issue, the nonmoving party must demonstrate that the record evidence is sufficient to either establish or, at least, generate a genuine issue with respect to "every element essential to that party's case . . . on which that party will bear the burden of proof at trial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). The nonmoving party will have met this burden if that party can show that the evidence as to each element is undisputedly in that party's favor or is "sufficiently open-ended to permit a rational factfinder to resolve the issue in favor of either side." *National Amusements v. Town of Dedham*, 43 F.3d 731, 735 (1st Cir. 1995).

Background

On December 12, 1993, Lancey Taylor's 1990 Ford Probe automobile left the roadway and struck a utility pole.[1] (QSS's Statement of Material Facts, Docket No. 15, at ¶ 1; Taylor's Statement of Material Fact in Opposition, Docket No. 24, at ¶ 1; QSS's Reply Statement of Material Facts, Docket No. 26, at ¶ 1.) On or around October 1996, Ford instituted a recall campaign related to the "motorized safety belts" contained in 1990-1992 model year Ford Probes. (*Id.* at ¶ 3.) QSS manufactured the subject seat belt assembly. According to Taylor's complaint and the testimony of her expert, Fred Hochgraf, the motorized safety belt suffers from a defective design. (*Id.* at ¶¶ 5-6.) However, the complaint does not allege and Dr. Hochgraf does not contend that there was any defect in the manufacture of the safety belt. (*Id.* at ¶ 6.) The record in all respects indicates that QSS manufactured the safety belt contained in Taylor's car according to design specifications provided by Defendant Mazda Motor ("Mazda"). (*Id.* at ¶ 7.)

[1] Taylor and QSS dispute whether Taylor was wearing her seatbelt. (SMF at ¶ 1; Taylor's Statement of Material Fact in Support of Her Opposition, Docket No. 24, at ¶ 1.) However, that fact does not need to be established to resolve the pending motion.

At all times relevant to this case, the motorized safety seatbelt system was not subject to a Federal Motor Vehicle Safety Standard. Instead, the engineering standard QSS was required to meet was set by its customer, Mazda. (Statements of Material Facts at ¶ 7.) When QSS began manufacturing the system, it tested the product with a test that caused the product to fail. This test was devised by QSS and did not comply with Mazda's testing specifications. Concerned by the product's failure, QSS contacted Mazda and proposed two design counter-measures that Mazda never incorporated into the product's design. (*Id.* at ¶¶ 16, 18.) With clarification provided by Mazda and another manufacturer of the product, QSS modified the test it was conducting and, henceforth, the product uniformly passed. (Taylor's Statement of Material Facts in Opposition at ¶ 7, Exhibit 2, at 29-30; QSS's Reply Statement of Material Facts at ¶ 7, Exhibit B, at 29-30.) The nature of the failure that resulted under the initial tests was the same as the failure that is alleged to have occurred in Taylor's automobile. (Taylor's Statement of Material Facts in Objection, at ¶¶ 20-21.)

Discussion

Taylor's complaint seeks damages against the named Defendants for defective design and manufacture. However, the statements of material fact submitted by Taylor and QSS establish that the safety seatbelt system was manufactured to Mazda's design specifications and complied with those specifications in all regards. Thus, the allegations must be understood to complain only of a design defect, not of a manufacturing defect. Assuming for purposes of this motion that the safety seatbelt was defectively designed, the issue presented is whether a manufacturer may be held liable for making a defective product for a third-party designer and seller when the manufacturer makes the product precisely according to the third-party designer's specifications.

The parties concede that Maine law governs this issue. However, there is no Maine law on point. QSS argues that, given the opportunity, the Law Court would follow the commentary of Section 404 of the Second Restatement of Torts and rule that QSS is insulated from this suit based on the so-called contractor's defense. Section 404 of the Second Restatement of Torts provides that an "independent contractor" who "negligently makes, rebuilds, or repairs a chattel for another is [generally] subject to . . . liability." RESTATEMENT (SECOND) OF TORTS § 404 (1965). Comment (a) to Section 404 states an exception to the general rule for circumstances in which an "employer" provides the independent contractor with the plan, design, or materials necessary to build the chattel. *See id.*, cmt. a. This exception itself gives way to an exception if a competent contractor would realize that "there is a grave chance that his product would be dangerously unsafe." *Id.* The terms "employer" and " independent contractor" are not defined. The relevant text of comment (a) is as follows:

> [O]ne who employs a contractor to make a chattel for him . . . usually provides not only plans but also specifications, which often state the material which must be used. Indeed, chattels are often made by independent contractors from materials furnished by their employers. In such a case, the contractor is not required to sit in judgment on the plans and specifications or the materials provided by his employer. The contractor is not subject to liability if the specified design or material turns out to be insufficient to make the chattel safe for use, unless it is so obviously bad that a competent contractor would realize that there was a grave chance that his product would be dangerously unsafe. The same is true in regard to materials furnished by the employer. . . .

Id.

QSS cites several cases from other jurisdictions that support recognition of a so-called[2] contractor's defense, based on the foregoing comment. (MSJ at 3-5.) Taylor seeks to distinguish

[2] Whether the rules reflected in this commentary actually amount to a "defense" is debatable, particularly because general principles of tort law would absolve a manufacturer of liability anyway under the facts of this case, based on the lack of fault for the defective design and the absence of any flaw in the manufacturing process. In fact, the commentary to Section 404 would seem to expand a contractor's liability rather than restrict it, because it recognizes that liability may exist where a contractor competently manufactures a product for another person according to that

the cases on factual grounds. (Plaintiff's Objection to MSJ, Docket No. 23, at 4-11.) Among other distinctions, she primarily contends that her case is different because "QSS played an active role in the design and testing" of the defective product. (*Id.* at 4.) Specifically, Taylor contends that QSS participated in the design of the system by "identifying the defect . . . and designing or proposing designs to address this defect and, ultimately, in requiring that the buyer 'lower the bar' by incorporating less stringent testing protocols." (*Id.*)

I consider Taylor's characterization of the facts to be overstated. QSS did not impose any design specifications on Mazda, nor did it do anything that lead Mazda to modify the design of the allegedly defective product. Furthermore, as already noted, the record indicates that QSS's manufacture of the product was accomplished according to Mazda's specifications. There is no indication that any error or flaw resulted from the manufacturing process that itself degraded the quality of the product. Because a genuine issue of material fact has not been generated so as to permit a factfinder to conclude that QSS was negligent in either designing or manufacturing the product, the only basis remaining for liability would be if QSS manufactured the product even though the design was "so obviously bad that a competent contractor would realize that there was a grave chance that [it] would be dangerously unsafe." RESTATEMENT (SECOND) OF TORTS § 404 cmt. a.

As QSS notes in its brief, several courts have recognized the so-called contractor's defense as being applicable in factual circumstances similar to this case. *See, e.g., Nickolson v. Alabama Trailer Co.*, No. 1990697, 2000 Ala. LEXIS 489, at *7-*8 (Ala. Nov. 17, 2000) (See, J., dissenting) (reversing grant of summary judgment and holding that expert's testimony that reasonable manufacturer would not have followed designer's specifications generated a genuine

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person's design specifications. Moreover, because the issue raised by comment (a) goes to the existence of a duty, it really is not in the nature of a civil "defense." *See Housand v. Bra-Con Indus., Inc.*, 751 F. Supp. 541, 544 n.6 (D. Md. 1990).

issue of material fact on whether plans were so obviously defective as to give notice that product was unreasonably dangerous); *Moon v. Winger Boss Co.*, 287 N.W.2d 430, 434 (Neb. 1980) (Krivosha, C.J., concurring) (affirming jury verdict in favor of manufacturer on claims of strict liability and negligence and holding that trial court could have entered a directed verdict for manufacturer because "[t]here was no credible evidence supporting a finding that the plans . . . were so obviously, patently, and glaringly dangerous that a manufacturer exercising ordinary care under the circumstances then existing would not follow them."). I consider the rule described in comment (a) of the Second Restatement of Tort as applied in *Nicholson* and *Moon*, among other cases,[3] to accurately reflect the common law of torts as it would be applied by Maine's highest court.

Looking to the parties' statements of material fact, it is immediately evident that no evidence, specifically expert testimony, is available that could support a finding that Mazda's design specifications were so obviously, patently or glaringly dangerous that QSS breached a duty it owed to Taylor by following them. With respect to Taylor's claim that QSS identified "the defect," the record indicates only that before adopting Mazda's test, QSS devised a test that exceeded the limits of the product. This fact does not lead to an inference that the product had a clearly apparent defect. A test can always be devised that will exceed the limitations of a product. Nor does the fact that QSS reported its findings to Mazda with suggested modifications

[3] Among the cases cited by QSS, other than *Moon*, are *Garrison v. Orangeville Mfg Co*., 492 F.2d 346, 353 (6th Cir. 1974) (affirming trial court's directed verdict against plaintiff and holding that plaintiff's theory of liability based on "failure to test for design safety" could not support jury's verdict because "we find it unreasonable to impose upon a manufacturer such a duty . . . where the manufacturer is making something to particular specification supplied by the customer"); *Spangler v. Kranco*, 481 F.2d 373, 375 (4th Cir. 1973) (Butzner, J., dissenting) (affirming directed verdict for manufacturer where court was "of the opinion that [manufacturer] acted reasonably in relying upon [designer's] industrial expertise and following its plans and specifications . . . ."); and *Housand v. Bra-Con Indus., Inc.*, 751 F. Supp. 541, 545 (D. Md. 1990) (granting summary judgment to manufacturers of automobile assembly line components over expert's testimony that relevant portion of assembly line was patently unsafe where manufacturers "did all their work under the watchful eye of GM engineers and in the expectation that GM would fully meet the panoply of its legal duties to provide employees with a safe place to work").

give rise to an inference that a product defect existed and was readily apparent to QSS. A product can always be made safer.

Conclusion

Because there is no basis in the record to generate an inference that QSS contributed to the design of the product, inexpertly manufactured the product or negligently followed the specification provided by Mazda knowing them to be patently defective, there is no basis for Plaintiff's claims against QSS. Therefore, it is my recommendation that the Court **GRANT** QSS's motion for summary judgment.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) (1993) for which de novo review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.

Dated: December 27, 2000

_____
Margaret J. Kravchuk
U.S. Magistrate Judge

U.S. District Court
District of Maine (Bangor)

CIVIL DOCKET FOR CASE #: 00-CV-56

TAYLOR v. MAZDA MOTOR (USA), et al Filed: 03/22/00
Assigned to: JUDGE D. BROCK HORNBY Jury demand: Defendant
Demand: $0,000 Nature of Suit: 365
Lead Docket: None Jurisdiction: Diversity
Dkt # in KENNEBEC SUPERIOR : is CV-99-269

Cause: 28:1441 Notice of Removal-Personal Injury

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